STATE OF MICHIGAN

IN THE

SUPREME COURT

POLICE OFFICERS ASSOCIATION
OF MICHIGAN,

Plaintiff-Appellee,

v

SC: 127503
COA 244919
Ottawa CC 02-042460-CZ

OTTAWA COUNTY SHERIFF, OTTAWA COUNTY and
OTTAWA COUNTY BOARD OF
COMMISSIONERS,

Defendants-Appellants.

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PLAINTIFF-APPELLEE POLICE OFFICERS ASSOCIATION OF MICHIGAN'S SUPPLEMENTAL BRIEF

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STATEMENT OF QUESTIONS AS ORDERED BY THE SUPREME COURT

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Plaintiff-Appellee answers the question "No."

II. **WHETHER A REVIEWING COURT HAS AUTHORITY TO DIRECT THE ARBITRATION PANEL TO RECONSIDER ITS DETERMINATION OF THE "ECONOMIC ISSUES IN DISPUTE" IN LIGHT OF THE CONCLUSIVE AUTHORITY GRANTED TO THE ARBITRATION PANEL IN MCL 423.238?**

Plaintiff-Appellee asserts that the Court of Appeals decision is only premised on the arbitration panels erroneous interpretation of the statute and procedural rejection of POAM's issues and does not direct the arbitration panel to reconsider its determination of the "economic issues in dispute,"consequently, the question, as posed, is not relevant to the proceeding.

STATEMENT OF FACTS

Plaintiff-Appellee Police Officers Association of Michigan (hereinafter referred to as "POAM") incorporates by reference herein the "Counter-statement of Material Facts and Proceeding" from POAM's Brief in Opposition to Defendant-Appellants Application for Leave to Appeal.

ARGUMENT

I

THE ACT 312 ARBITRATION PANEL IMPROPERLY REJECTED THE ISSUES RAISED AT THE HEARING, AS THE PROCEDURAL DISMISSAL OF ISSUES AND THE PREHEARING SUMMARY OF ISSUES IN DISPUTE WERE NOT "CONCLUSIVE" UNDER MCL 423.238, BECAUSE THEY DID NOT CONSTITUTE NOR COMPLY, RESPECTIVELY, WITH THE SECTION 8 REQUIREMENT THAT DETERMINATIONS OF ECONOMIC ISSUES IN DISPUTE OCCUR "AT OR BEFORE THE CONCLUSION OF THE HEARING"

A. Summary of Argument.

The Act 312 arbitration panel's procedural rejection of issues precluded the arbitration panel from reaching any substantive determination of whether the issues raised at the initiation of the hearing were economic or non-economic issues in dispute.

The prehearing summary of issues in dispute did not occur "at of before the conclusion of the hearing," given that a "hearing," as defined in sections 6 and 8 the Act, MCL 423.236, 423.238, had not been initiated.

Both the prehearing summary of issues and the subsequent procedural dismissal of issues are not actions of the arbitration panel which are "conclusive" under MCL 423.238, because: (1) the procedural dismissal did not constitute a section 8 determination of economic issues in dispute, and (2) the prehearing summary of issues in dispute did not comply with the section 8 mandate that the determination of economic issues in dispute occur "at of before the conclusion of the hearing."

The Act 312 arbitration panel's rejection of POAM's issue is, therefore, erroneous as neither the statute nor the administrative rules require issues to be determined by the arbitration panel before the hearing. Consequently, both unions and employers have the right, and are not prohibited from, raising issues at the hearing under Act 312, in fulfilment of its mandate that the statute be liberally considered.

B. Arbitration Panel's Decision.

To properly address the Court's first question a preliminary understanding of what actions the arbitration panel did and did not undertake, is necessary.

1. Actions taken by the Arbitration Panel.

- The arbitration panel held a prehearing conference on September 19, 2000, which was not the hearing. (See Ex. 1, p. 2, attached to the Brief[1]).
- The arbitration panel issued a summary of the results of the pre-hearing conference, including reference that the issues existing at the time were economic in nature. (See Ex. 1, p. 3, attached to the Brief).
- The summary expressly stated that the date for the actual hearing was to be set at a later time. (See Ex. 1, p. 3, attached to the Brief).
- The arbitration panel acknowledged that prior to initiation of the arbitration hearing on October 4, 2001, a telephone conference occurred in August, 2001, at which time it was known that a dispute existed as to retroactive arbitration of grievances/wages and duration of the contract, which was thereafter confirmed in writing on September 26, 2001. (See Ex. 1, p. 9, attached to the Brief).

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[1] Reference in this supplemental brief to exhibits attached to the "Brief" relates to the numbered exhibits attached to Plaintiff-Appellee POAM's Brief in Opposition to Defendant-Appellants Application for Leave to Appeal.

- When the arbitration hearing was initiated on October 4, 2001, POAM presented the issues of retroactive arbitration of grievances/ wages and duration. The hearing was specifically set to deal with only those remaining issues. (See Ex. 1, attached to the Brief).
- The arbitration panel "denied on procedural grounds" POAM's submission of issues claiming that "the panel can properly decide the relevant issues prior to the hearing" and that "the Act and the Rules prohibit a consideration of the arbitration-related issues at a time near or at the scheduled arbitration hearing,"because the arbitration panel had already identified "issues well in advance of the hearing,"citing section 8 of the Act and the Administrative Rules. (See Ex. 1, pp. 8, 10 and 11 attached to the Brief).

2. Action Not Taken by the Arbitration Panel.

- The arbitration panel's summary of the prehearing, which stated that the existing issues were economic, did not address POAM's issues as later raised at initiation of the hearing.
- The arbitration panel's prehearing summary did not occur "at or before the conclusion of the hearing." (See Ex. 1, p.3, attached to the Brief).
- The Arbitration Panel never made a substantive determination of whether the issues POAM raised at the initiation of the arbitration hearing were economic or non-economic issues nor, in any event, did it make a determination "at or before the conclusion of the hearing," due to the arbitration panel's procedural denial of Plaintiff's issues as untimely raised. (See Ex. 1, p. 11 attached to the Brief; Ex. A, p. 1, attached hereto).
- Because the last best offer presented by the parties regarding POAM's issues of retroactive arbitration of grievances and duration were procedurally denied, the arbitration panel did not reach the merits of the dispute. (See Ex. A, p. 1, attached hereto).

C. Statutory Interpretation of MCL 423.238

Fundamental to addressing the first question posed by the Court is not only recognition of what the arbitration panel did and did not do in this matter, but also recognition of the proper statutory interpretation of MCL 423.238 and its interplay with the Compulsory Arbitration Act (PA 312 of 1969, as amended, MCL 423.231 et seq.) as a whole.

The Court of Appeals decision identified several of the rules of statutory interpretation which are applicable, stating:

> The primary goal of judicial interpretation of statutes is to ascertain and give effect to intent of the legislature. *Gladych* v *New Family Homes, Inc.*, 468 Mich 594, 597; 664 NW2d 705 (2003). ...
>
> ...Additionally, statutory language should be construed reasonably, keeping in mind the purpose of the Act. *Draprop Corp. v Ann Arbor*, 247 Mich App 410, 415; 636 NW2d 787 (2001).

(See Ex. 4, Court of Appeals Slip Op. at p. 3, attached to the Brief). In *Chabre v Page*, 298 Mich 278, 299 NW 82 (1941), the Supreme Court reiterated time honored principles pertaining to statutory interpretation, stating:

> We are confronted here with a problem of statutory interpretation and can do no better than again repeat the oftenquoted cardinal rule as stated in *City of Grand Rapids v Crocker*, 219 Mich 178, 182, 189 NW2d 221, 222: "There seems to be no lack of harmony in the rules governing the interpretation of statutes. All are agreed that the primary one is to ascertain and give effect to the intention of the Legislature. ... The rule is no less elementary that effect must be given if possible, to every word, sentence and section. To that end, the entire act must be read, and the interpretation to be given to a particular word in one section, arrived at after due consideration of every other section, so as to produce, if possible, a harmonious and consistent enactment as a whole." (Emphasis supplied) .

Chabre, 298 Mich at 283. Likewise, the Court in *Koontz v Ameritech Services, Inc.*, 466 Mich 304, 645 NW2d 34; stated:

> Courts must give effect to every word, phrase, and clause in a statute, and must avoid an interpretation that would render any part of the statute surplusage or nugatory *Wickens*, *supra* at 60, 631 NW2d 686. (Emphasis supplied).

Koontz, 466 Mich App at 39.

The Legislature left no doubt as to the public purpose and legislative intent of the Compulsory Arbitration Act, succinctly stating in section 1:

> It is the public policy of this state that in public police and fire departments, where the right of employees to strike is by law prohibited, it is requisite to the high morale of such employees and the efficient operation of such departments to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes, and to that end the provisions of this Act, providing for compulsory arbitration, shall be liberally construed. (Emphasis supplied).

MCL 423.231.

Section 8 of the Compulsory Arbitration Act, being MCL 423.238, states, in pertinent part:

> At or before the conclusion of the hearing held pursuant to section 6, the arbitration panel shall identify the economic issues in dispute, and direct each of the parties to submit, within such time limit as the panel shall prescribe, to the arbitration panel and to each other, its last offer of settlement on each economic issue. The determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive. ... As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in section 9 ... (Emphasis supplied).

The arbitration panel erred in its interpretation of the statute, specifically section 8 and the administrative rules when it concluded: (1) that it acted properly under the section 8 language "at or before the conclusion of the hearing" when it decided issues "prior to the hearing," referring to its prehearing action summarizing issues; and (2) that POAM was prohibited by the statute and rules from raising issues " at a time near or at the scheduled hearing," because the arbitration panel had already identified "issues well in advance of the hearing."

The section 8 language which states, "at or before the conclusion of the hearing held pursuant to section 6, the arbitration panel shall identify the economic issues in dispute," is a mandate of when identification by the arbitration panel of economic versus non-economic issues must occur. The plain meaning of "At ... the conclusion of the hearing," is that the hearing has already been initiated and concluded. The plain meaning of "...before the conclusion of the hearing," is that action is taken before the conclusion of an already initiated hearing, not at a time before the hearing is initiated. The word "hearing" has a plain meaning under the statute, as section 6 of the Act (which is referenced in section 8) recognizes a "hearing" involves the taking of testimony on the record. This language,

by simple deduction, establishes that the arbitration panel's conclusion that it could identify issues "well in advance" and "prior to the hearing," such that POAM is barred from raising issues at the hearing, is not supported by the language of section 8. The arbitration panel's interpretation changes the significance of the term "hearing" in section 8, thereby failing the fundamental statutory interpretation requirement that every word, phrase and clause in the statute be given effect so as to avoid an interpretation that would render the word "hearing" as used in the sentence, section and statute as a whole, mere surplusage or nugatory. [2]

It must be clarified that POAM, at no time, has argued that the language of section 8 expressly states a party has the right to raise issues in dispute "at or before the conclusion of a hearing." Instead, the language describers the role of the arbitration panel and restrictions thereon, which then impacts on the right of the parties to present issues. It is POAM's position that reading of the entire Compulsory Arbitration Statute as a harmonious and consistent enactment, establishes that there are no provisions within the Act, especially section 8, which preclude the raising of issues in dispute at the initiation of the hearing, as erroneously claimed by the arbitration panel. Reading the statute as a whole, in recognition of the public policy mandate that the statute be liberally construed to resolve disputes to maintain high morale and efficient operation of departments, allows for the raising of issues at the initiation of the hearing. The Court of Appeals understood the plain meaning of section 8, stating:

> The plain language of MCL 423.238 provides that "the arbitration panel shall identify the economic issues in dispute *at or before the conclusion of the hearing* held pursuant to section 6. The legislature's use of the disjunctive "or" indicates the legislature intended for Arbitration panels to determine the economic issues in

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[2] Because the Court has directed the parties to address two questions, a response to the arbitration panel's claim of "practical reasons" for its procedural dismissal of issues due to "last minute" problems or an attempt to "sandbag" or "surprise" the other party, need not be addressed. Suffice to state no such surprise or sandbagging can occur given the ample protections afforded by the section 7a remand provisions, together with a party's right to file an unfair labor practice charge under section 10(1)(e) of the Public Employment Relations Act, MCL 423.210(1)(e) in the event an issue has not been raised or bargained prior to submission in compulsory arbitration. In any event, in this particular matter, as reflected by the Court of Appeals in footnote 5, "nonetheless, the record makes it clear that the parties discussed the issue of retroactive arbitration of grievances and that Defendants were on notice that the issue was in dispute."

> dispute, either *at the hearing* or *before the conclusion of hearing*. There is no language in MCL 423.238 that requires issues to be determined before the hearing or that precludes the consideration of new issues at the hearing. (Emphasis supplied).

(See Ex. 4, Court of Appeals Slip Op. at p. 3, attached to the Brief).

Section 8 further states that the determination by the arbitration panel as to the issues in dispute, being economic or non-economic in nature, "shall be conclusive." The statutory reference to "conclusive" authority to determine the economic issues in dispute, must be read consistent with the "at or before conclusion of the hearing" language to thereby fulfill the statutory interpretation mandate that language be "construed reasonably," "keeping in mind the purpose of the act," "so as to produce a harmonious and consistent enactment as a whole," "to avoid an interpretation that would render any part of the statute surplusage or nugatory." The logical result, as confirmed by years of practice in handling cases under Act 312, is that the arbitration panel's "conclusive" authority only pertains to the substantive identification, at or before the conclusion of the hearing, of whether the issues raised by the parties are economic or non-economic. Consequently, the "conclusive" authority granted to the Arbitration panel does not apply to the type of determinations made here, which occurred at the prehearing and then later on procedural grounds precluding issues from consideration as untimely raised. [3]

A procedural determination contrary to the provisions of the statute, when read as a whole and liberally construed, remains subject to judicial review pursuant to section 12 of the Act as an action of the arbitration panel exceeding its jurisdiction, MCL 423.242. [4] Where, as in the present matter, the action of the arbitration panel is premised on a misinterpretation of the statute, judicial review is appropriate to determine if the arbitration panel exceeded its jurisdiction as an error or law. As indicated by the Court of Appeals:

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[3] The arbitration panel's procedural, as opposed to substantive, action in this matter was undertaken, albeit erroneously, under 1999 AC, R423.509(2)(e) which empowers the arbitration panel to "dispose of procedural requests or other similar matters."

[4] 423.242 provides in pertinent part, that "orders of the arbitration panel shall be reviewable by the circuit court ... but only for reasons that the arbitration panel was without or exceeded its jurisdiction..."

> Similarly, statutory construction is a question of law that is subject to de novo review. *Haworth, Inc. v Wickes Mfg. Co.*, 210 Mich App 222, 227; 532 NW2d 903 (1995). While circuit courts are limited in their review of arbitration decisions pursuant to statute, MCL 423.242, we may review an error of law that is substantial and apparent on its face. *Collins v Blue Cross Blue Shield of Michigan*, 228 Mich App 560, 567; 579 NW2d 435 (1998) (citations omitted).

(See Ex. 4, Court of Appeals Slip Op. at p. 2, attached to the Brief).

What is patently clear from the statute, as well as the administrative rules underlying the compulsory arbitration act, is that the language in section 8 that "the determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic is conclusive," does not, in fact NEVER, empowers the arbitration panel to exercise discretion to exclude issues in dispute which are timely raised. [5] The arbitration panel's role is to accept all timely raised issues and to thereafter identify those issues as economic or non-economic. There is no discretion vested in the arbitration panel to exclude timely raised issues. Once the issues are identified as economic or non-economic, section 8 then sets into motion the requirement that the arbitration panel choose from either the Union or Employer's last best offer, if the issue is identified as economic. If an issue is designated as non-economic, the arbitration panel is at liberty to frame an award which may consist of accepting either party's last best offer or framing of an award with a combination of both last best offers or something entirely of the arbitration panel's own creation. This is a by-product of the section 8 language, which limits the arbitration panel to select the last best offer of either party

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[5] Even *Amicus Curiae*, Michigan Municipal League, recognizes at page 12 of its brief that "this section should not be read as allowing this panel to define which issues are in dispute."

Issues raised after the hearing is concluded would be untimely and subject to procedural exclusion, as well as an attempt to pursue a non-mandatory subject of bargaining in compulsory arbitration, as the compulsory arbitration panel, pursuant to Act 312, only has jurisdiction to rule upon "mandatory" subjects of bargaining. *Metropolitan Council 23 and Local 1277, AFSCME, AFL-CIO v City of Center Line,* 414 Mich 642, 327 NW2d 822 (1982). As stated in *city of Center Line*, 327 NW2d at 827:

> The distinction between mandatory and permissive subjects of bargaining is significant in determining the scope of the Act 312 arbitration panel's authority. Given the fact that Act 312 compliments PERA, and that under section 15 of PERA the duty to bargain only extends to mandatory subjects, we conclude that the arbitration panel can only compel agreement as to mandatory subjects.

if the issue is economic, as opposed to non-economic, by stating in pertinent part, "... as to each economic issue, the Arbitration panel shall adopt the last offer of settlement ..."MCL 423.238.

To the extent an arbitration panel finds an issue presented as unclear or that parties have not sufficiently bargained over an issue, the arbitration panel is empowered, pursuant to section 7a of the Act, MCL 423.237a to remand the issue to bargaining. Section 7a of the statute states, in pertinent part:

> At any time before the rendering of an award, the chairman of the arbitration panel, if he is of the opinion that it would be useful or beneficial to do so, may remand the dispute to the parties for further collective bargaining for a period not to exceed 3 weeks. If the dispute is remanded for further collective bargaining, the time provisions of this act shall be extended for a time period equal to that of the remand....(Emphasis supplied).

If the arbitration panel possessed unfettered discretion, supported by the "conclusive" authority language of section 8, to decide which issues parties could pursue in compulsory arbitration, the fundamental purpose of the Act would be lost. Section 1 of the Act exists to avoid strikes through a dispute resolution procedure to maintain high morale and efficient operation of police and fire departments. To that end, the Act must be " liberally construed." If the arbitration panel has the unfettered discretion to pick and choose which issues could be pursued in compulsory arbitration, because its decisions are erroneously perceived as "conclusive," then both Unions and Employers could be foreclosed from pursuing fundamental issues, such as union requests for wages and benefits or employer requests for changes in health care coverage or cost sharing (which employers often raise as new issues during the course of arbitration proceedings.) [6] To suggest that an arbitration panel has discretion, exceeding its role to substantively determine, "at or before the conclusion of the hearing," economic versus non-economic issues in dispute, is contrary to the true and plainly evident purpose of section 8 and the statute as a whole.

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[6] This concern is heightened when it is recognized that flexibility is needed to allow raising of issues as they arise over time because arbitration cases are nearly always protracted, sometimes taking several years to complete.

D. Impact of Administrative Rules

In conjunction with the arbitration panel's contorted interpretation of section 8 of the Act (which will operate as a forfeiture of the right to pursue issues, which is contrary to the statutory intent that the provisions, hence rights, be liberally construed), is the equally misplaced reliance on several administrative rules, 1999 AC, R423.505 and 423.507. The arbitration panel stated:

> When the Association waited until the time of the hearing to raise its arbitration related issues, it violated the rules of the Act, and it would be improper to consider the last best offers at this time.
>
> ... The Act and the rules prohibit a consideration of the arbitration-related issues at a time near or at the scheduled arbitration hearing.

(See Ex. 1 at pp. 10 and 11, attached to the Brief.)

To the extent the administrative rules are either interpreted or applied as suggested by the panel, would render the rules in conflict with the statute. To the contrary, however, the administrative rules are not as restrictive as asserted by the Arbitration Panel. Administrative Rule R423.507(1) and (2) mandates the conducting of a pre-hearing conference subsequent to the appointment of the arbitrator. As stated in the rules, the pre-hearing conference is to be used to "discuss matters," including discussion about the "issues in the petition ..." Nowhere within Administrative Rule R423.507(1) and (2) or section 8 of the Statute is it stated that a party is foreclosed and prohibited from raising issues after the pre-hearing conference or any time prior to the hearing.

One need not be a Rhodes Scholar to comprehend that neither the administrative rules nor the statute place a restriction on raising issues as asserted by the arbitration panel; and as was found by the Court of Appeals to be a substantial and apparent on its face error of law. If the Legislature seeks to foreclose raising of issues at a particular point in time during the compulsory arbitration process, then the matter is for the Legislature and not for the Court to infuse into the statute. As the Supreme Court recently concluded in *Koontz v Ameritech Services, Inc.*, 466 Mich 304, 312, 645 NW2d 34, 39, "... the proper role of the judiciary is to interpret and not write the law ..."

The Court of Appeals correctly responded to the arbitration panel's incorrect application of administrative rules, stating in footnote 6, consistent with the arbitration panel's dissenting opinion, as follows:

> The arbitration panel also relied, in part, on 1999 AC, R423.505 and R423.507(1) and (2) in rejecting POAM's last best offer regarding the arbitration of grievance issues. Rule 423.505 provides for the submission of a petition to initiate compulsory arbitration under Act 312. Rule 423.507 addresses the pre-hearing and arbitration hearings. Neither Rule 423.505 nor Rule 423.507 requires the identification of issues in advance of the hearing.

(See Ex. 4, Court of Appeals Slip Op. at pp. 3-4, attached to the Brief).

E. Answer to the First Question Posed by the Court.

The arbitration panel's procedural rejection of POAM's issues precluded the arbitration panel from reaching the substantive determination of whether the issues raised at the hearing were economic or non-economic issues in dispute. As a result, the language establishing "conclusive" authority of the arbitration panel does not enter as a relevant consideration in this matter. Likewise, because the arbitration panel's prehearing action does not constitute a determination "at or before the conclusion of the hearing" of economic issues in dispute, the "conclusive" authority language is neither relevant to nor a shield for the arbitration panel's erroneous decision.

Given the proper construction of section 8 against the backdrop of what the arbitration panel did and did not do, suggests that the framing of the first question is based on a misunderstanding of section 8 fostered by the confused logic of the County in its application for leave to appeal. The relationship between proper interpretation of that statute and the actions of the arbitration panel, when fairly scrutinized, reveals a substantial and apparent legal error, as found by the Court of Appeals:

> The arbitration panel's conclusion that the issue regarding the retroactive arbitration of grievances was precluded under MCL 423.238 because the issue was not raised *before* the hearing does not comport with the plain language of the statute and is an error of law that is substantial and apparent on its face.

(See Ex. 4, Court of Appeals Slip Op. at p. 3, attached to the Brief).

As a result, POAM submits that the answer to the first question is "no" for the following reasons:

- The arbitration panel's summary of the prehearing as to those issues existing at the time being economic, is not a determination under section 8 of the Act, as it did not occur when mandated by the statute "at or before the conclusion of the hearing," as the "hearing," at that point in time, had not been initiated.
- The arbitration panel never issued a substantive determination that the issues Plaintiff raised at initiation of the hearing were economic or non-economic, as the arbitration panel declared that it was denying the issues on procedural grounds.
- The arbitration panel improperly rejected Plaintiff's issues which were identified before the hearing and raised at the initiation of the hearing. (See Ex. 4, Court of Appeals Slip Op., fn 5 at p. 3 and Ex. 1, p. 9 attached to the Brief).
- The "plain language" of MCL 423.238, when construed reasonably, keeping in mind the purpose of the Act, so as to produce a harmonious and consistent enactment as a whole, without rendering any part surplusage or nugatory, requires an interpretation of section 8 which recognizes that the arbitration panel, when acting under the "conclusive" authority language, is undertaking a substantive act to identify economic versus non-economic issues, which can only occur "at or before the conclusion of the hearing," such that neither the prehearing action of the arbitration panel nor the procedural denial of the issues raised by POAM at the initiation of the hearing as untimely, can be recast, relabeled or misconstrued as determinations made under the "conclusive" authority language; hence the "conclusive" authority of the arbitration panel is both unrelated to and an irrelevant consideration in this matter.

II

THE COURT OF APPEALS' DECISION WAS PREMISED ON THE ARBITRATION PANEL'S ERRONEOUS INTERPRETATION OF THE STATUTE AND PROCEDURAL REJECTION OF POAM'S ISSUES, CONSEQUENTLY THE "CONCLUSIVE" AUTHORITY OF THE ARBITRATION PANEL TO SUBSTANTIVELY DETERMINE ECONOMIC VERSUS NON-ECONOMIC ISSUES WAS NEITHER THE BASIS OF REVERSAL BY THE COURT NOR RELEVANT TO THIS MATTER

A. Answer to the Second Question Posed by the Court.

The same concerns raised by POAM in addressing the propriety of the first question posed by the Supreme Court also exist with regard to the second question. Plaintiff-Appellant POAM, therefore, incorporates by reference the entirety of its first argument as a response to the second question posed.

B. Ruling of the Court of Appeals.

The ruling of the Court of Appeals does not direct the arbitration panel to "reconsider its determination of economic issues in dispute," as stated by the Court in the second question posed. To the contrary, the Court of Appeals decision must be viewed as directing the arbitration panel to procedurally accept POAM's issues as timely raised, with subsequent determination of the issues by the arbitration panel on the merits. [7]

Consequently, the Court correctly concluded that its review was *de novo* due to the Circuit Court's summary disposition action, stating "this court reviews *de novo* a trial court's grant or denial or summary disposition." *Spiek v Department of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). (See Ex. 4, Court of Appeals Slip Op. at p. 2, attached to the Brief). In addition, the Court of Appeals made clear that a matter of statutory interpretation was at issue hence the matter

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[7] This may result in the arbitration panel accepting either POAM's last best offer or the County's last best offer if the issue is substantively determined by the arbitration panel to be economic (which will then be "conclusive") or may result in the arbitration panel accepting POAM's last best offer or rejecting it, accepting the County's last best offer or rejecting it, or fashioning its own award if the issue is determined to be non-economic.

remained a "question of law that is subject to *de novo* review." (See Ex. 4, Court of Appeals Slip Op. at p. 2, attached to the Brief). *See also: In Re: MCI, 460 Mich 413, 596 NW2d 164 (1999).* The Court reviews questions of law under a *de novo* standard of review. *Roberston v Daimler Chrylser Corporation*, 465 Mich 732, 641 NW2d 567 (2002), [citing *DiBenedetto v West Shore Hospital*, 461 Mich 394, 401, 605 NW2d 300 (2000)]. The Court of Appeals further emphasized that "...we may review an error of law that is substantial and apparent on its face." (See Ex. 4, Court of Appeals Slip Op. at p. 2, attached to the Brief). [8]

While substantive determinations "at or before the conclusion of the hearing," of issues as economic or non-economic (which did not occur with regard to either the prehearing issues or the issues raised at the initiation of the hearing) are subject to the "conclusive" authority standard and presumably not subject to review, the procedural dismissal, which occurred in this matter, is not within the arbitration panel's "conclusive" authority and remains subject to review under section 12 of the Act, MCL 423.242, as a substantial and apparent on its face error of law, tantamount to the arbitration panel having exceeded its jurisdiction.

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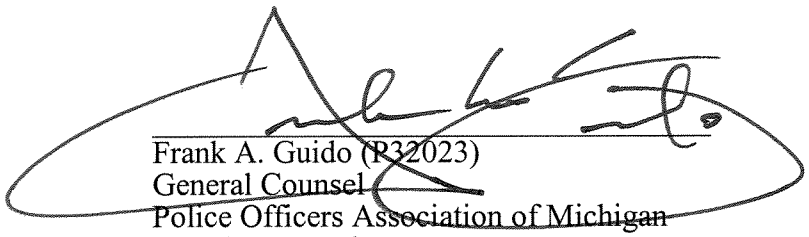
[8] The Court of Appeals in footnote 3 (See Ex. 4, Court of Appeals Slip Op. at p. 2, attached to the Brief), asserted that to the extent the arbitration panel had determined that Plaintiff's issues were economic, the determination is conclusive against claims challenging arbitrability of issues or whether the issues are economic as opposed to non-economic. This footnote reference identifies "appellant challenges," however, this is a typographical error as the challenge was raised by then Appellee County in its brief in response, to which then Appellant POAM filed a reply brief. The Court of Appeals reference that a determination existed as to economic issues only pertains to the status of the prehearing issues and is not a statement material to the decision, since the Court held that the arbitration panel's error pertained to its procedural denial of Plaintiff's issues because the Act does not require issues to be determined before the hearing nor does the Act preclude the consideration of new issues at the hearing.

CONCLUSION AND RELIEF REQUESTED

Based on the aforesaid, Plaintiff-Appellee POAM respectfully requests this Court deny the application for leave to appeal.



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Dated: January 12, 2006